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LETTER DATED 23 MARCH 1998 FROM THE PRESIDENT OF THE GOVERNING COUNCIL OF THE UNITED NATIONS COMPENSATION COMMISSION ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I am pleased to inform you that the Governing Council of the United Nations Compensation Commission has concluded its twenty-seventh session, held at Geneva from 9 to 11 March 1998.

The delegations of Kuwait and Iraq addressed the Council during its opening plenary meeting.

At its closing plenary meeting, the Governing Council approved the recommendations made by the Panel of Commissioners concerning part two of the first instalment of category D claims (individual claims for damages above $100,000) (see annex I). That instalment concerned one "unusually large and complex" claim filed by the Government of Kuwait. The Governing Council approved the award of $19,694,518.81 in respect of the claim (see annex II).

Also at its closing plenary meeting, the Council approved the recommendations made by the Panel of Commissioners concerning part two of the first instalment of category F claims (government claims) (see annex III). That instalment concerned two claims filed by the Government of Kuwait relating to losses alleged to have been incurred by the Kuwaiti Ministry of Foreign Affairs and Kuwait University. Both claims had been classified as "unusually large and complex" by the Panel of Commissioners. The Governing Council approved the award of $20,853,796 in respect of the two claims (see annex IV).

The Governing Council considered and took note of a report prepared by the Executive Secretary on the activities of the Commission covering the period from December 1997 to February 1998 (see annex V).

On the basis of a number of reports and information notes prepared by the secretariat, the Council discussed several issues relating to the processing and payment of claims. The Council discussed the issue of compensability of claims preparation costs for category D, E and F claims; decided that the deadline of 11 May 1998 should be set, after which date unsolicited supplementation of claims in categories E and F should no longer be accepted by the secretariat; and approved requested corrections to awards in various instalments of

category A claims (see annex VI). The Council also discussed the United Nations procurement system and the use of consultants by the Commission, a paper reviewing the methodology used in determining claims for category C4 (personal property losses) and various reports by Governments on the distribution of payments received from the Commission to successful claimants.

Finally, the Governing Council decided to hold its twenty-eighth session from 29 June to 1 July 1998.

(Signed) Gonçalo DE SANTA CLARA GOMES
President of the Governing Council of the
United Nations Compensation Commission

Annex I

Report and recommendations of the Panel of Commissioners concerning part two of the first instalment of individual claims for damages above $100,000 (category D claims)*

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* Previously issued as document S/AC.26/1998/3.

Introduction

1. This report contains the recommendations to the Governing Council of the United Nations Compensation Commission (the "Commission") by the Panel of Commissioners (the "Panel") appointed to review individual claims for damages above US$100,000 ("category 'D' claims"), pursuant to article 38 of the Provisional Rules for Claims Procedure (the "Rules"). 1/ These recommendations concern Claim 3000001 (the "Claim") submitted to the Panel by the Executive Secretary of the Commission as part of the first instalment of category "D" claims pursuant to article 32 of the Rules.

2. The Panel has reviewed the Claim in a continuum with the Panel's processing of the first instalment of category "D" claims. This report should therefore be considered in conjunction with the "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the First Instalment of Individual Claims for Damages above US$100,000 (Category 'D' Claims)" (the "First Report"). 2/ The Claim has been processed on the basis of the considerations, precedents and determinations expressed in the First Report which the present report incorporates by reference.

3. The Claim was filed with the Commission on 7 September 1992, two months after the commencement of the filing period for category "D" claims, making it one of the earliest claims filed with the Commission. The claimant, a Kuwaiti citizen (the "Claimant"), seeks compensation in a total amount of US$30,920,332.00 in respect of personal property losses which are claimed on the D4 page of the claim form, and real property losses which are claimed on the D7 page of the claim form, that he alleges he suffered as a result of the invasion and occupation of Kuwait by Iraq between 2 August 1990 and 2 March 1991 (the "jurisdictional period"). In respect of the D4 personal property losses, the Claimant submitted a claim for loss of clothing, personal effects, household furnishings, jewellery, motor vehicles and boats for US$805,400.88. Under "other" personal property losses, also claimed on the D4 page of the claim form, the Claimant is claiming US$29,900,355.00 in respect of a collection of Islamic art (the "Islamic Art Collection"), including US$2,000,000.00 for a collection of rare books (the "Book Collection"). The D7 real property claim is for US$214,576.12 that the Claimant states he spent on repairing and refurbishing his residence which was damaged during the invasion and occupation of Kuwait by Iraq. The Claimant reduced his claim by US$1,660,000.00 in respect of the Islamic Art Collection for items that he was able to repurchase.

I. THE PROCEEDINGS

4. On 11 April 1997, the Panel issued its first procedural order concerning claims in the first instalment. That order communicated, inter alia, the Panel's decision to classify the Claim as large or complex within the meaning of article 38(d) of the Rules. In that order it was also stated:

"... In respect of Claim 3000001, the Panel is inclined to the view that it is appropriate to use replacement value as of the date of the claimed loss, 2 August 1990, as the basis for valuation for the loss of the art collection being claimed for therein.

"... The secretariat is instructed to transmit to Iraq two copies of this Procedural Order and the file of Claim 3000001. Pursuant to article 36 of the Rules, the Panel hereby invites Iraq to submit on or before 10 October 1997 a written response to Claim 3000001, together with any and all other written comments it may have as well as any and all documents it intends to rely upon in this proceeding.

"... Due to the time period for completing the review of Claim 3000001 under article 38(d) of the Rules, the Panel does not envisage the granting of any extensions of such submission date."

5. On 5 May 1997, pursuant to instructions from the Panel, the secretariat issued a request to the Claimant for information and clarification of certain aspects of the Claim. The Claimant submitted his response on 14 May 1997. A further such request was made to the Claimant following a meeting of the Panel held on 1 to 3 September 1997. The Claimant submitted further materials in response to that request.

6. The Panel held a number of deliberative sessions during which it was assisted by members of the secretariat. In accordance with article 34 of the Rules, the secretariat provided administrative, technical and legal support to the Panel. The Panel was assisted by three sets of outside expert consultants in its review of the Claim. 3/ In order to clarify aspects of the valuation of the Claim, the Panel held a discussion with one of the experts.

7. Although the file of the Claim was duly submitted to Iraq as directed in the Panel's first Procedural Order, no comments were received from Iraq by the due date, i.e., 10 October 1997. However, on 24 December 1997, a response from Iraq was filed with the secretariat ("Iraq's response"). Despite the lateness of Iraq's response, the comments from Iraq were duly considered by the Panel in arriving at its conclusions.

II. EVIDENTIARY STANDARD

8. As stated in the First Report, the Governing Council has put the burden on the claimants to submit documents and other appropriate evidence sufficient to demonstrate both the circumstances and the quantum of the loss. 4/ The Panel further indicated in the First Report that it sees its role as balancing the interests of claimants who had to flee a war zone, with the interests of the Government of Iraq which is liable only for damage caused as a direct result of the invasion and occupation of Kuwait. 5/

III. ARTICLE 16 ISSUES AND COMMENTS

9. The issue concerning the valuation criteria and methodology to be applied in the evaluation of the loss of the art collection was raised in the sixteenth report issued by the Executive Secretary pursuant to article 16 of the Rules as follows: 6/

> "A claim has been submitted for the loss of a private collection of Islamic artwork, including rare ceramics, glasswork, stone, metalwork, textiles, and historical manuscripts and books, in Kuwait during the time of Iraq's occupation. According to the Claimant, some of the looted antiquities are being sold or offered for sale in third countries. In certain cases, the Claimant has been able to repurchase some of the stolen items but at a higher price than originally paid. The issue raised is the appropriate valuation criteria and methodology to be applied for the evaluation of the losses described in the situations listed above."

10. Three Governments including the Government of Iraq submitted additional information and views on that report. Their comments and views were taken into account by the Panel in its assessment of the Claim.

IV. FACTUAL BACKGROUND

11. In the First Report, the Panel made reference to various incidents which demonstrated the circumstances that prevailed during the invasion and occupation of Kuwait by Iraq. These circumstances were detailed in various United Nations documents prepared after the occupation of Kuwait by Iraq ended in March 1991, as well as in Commissioner Panel reports in other categories (the "Background Reports") which the Panel reviewed and found to be important in defining the criteria and evidentiary standards for category "D" claims. 7/

12. The Background Reports described in detail the destruction and chaos inflicted on Kuwait. Of particular relevance to the Claim are observations made in the first report to the Secretary-General of the United Nations on humanitarian needs in Kuwait in the immediate post-crisis environment. 8/ That report was submitted on 28 March 1991 by Mr. Martti Ahtisaari, a former United Nations Under-Secretary General, immediately after the visit of his mission to Kuwait. The report observes that he and his mission saw "... prolific evidence of arson, looting, malicious destruction of homes, businesses, markets, museums, libraries and all that a nation cherishes. Kuwait's coast is disfigured by broken buildings and rolls of barbed wire; its beaches made lethal by hundreds of thousands of mines." 9/

13. The Panel also made reference in the First Report to a report dated 26 April 1991, of Mr. Abdulrahim Farah, a former United Nations Under-Secretary General, in respect of the scope and nature of damage to Kuwait's infrastructure. In particular the Report notes the following concerning damage to residential housing:

"Houses and buildings located along the coastline, and which happened to be the more expensive and luxurious, appeared to have suffered more than others. It was along the coastline that the occupation forces had positioned a great number of their troops as part of the defence. Consequently they occupied most of the houses and fortified a large number of them. Those houses were not only looted and vandalized, but some of their structures damaged. The exteriors displayed particular evidence of such damage since they were used to position troops and weaponry. Pillboxes, bunkers and dug-outs have defaced the urban landscape along the seafront and considerable expense will be required for their removal." 10/

14. It is against this background that the Panel reviewed the circumstances described by the Claimant with respect to the losses claimed as a result of damage to and theft from his house located on Kuwait's coast.

V. THE PERSONAL PROPERTY CLAIM

15. The Claimant seeks compensation for the loss of clothing, household furnishings and appliances, personal effects, jewellery, boats and motor vehicles (the "non-art claim"), and for the loss of the Islamic Art Collection and the Book Collection (the "art claim").

16. Apart from the information provided in the claim form, the materials submitted in support of the Claim include the following:

a. photographs and a video recording made immediately after the liberation of Kuwait showing the Claimant's damaged house and the surrounding area;

b. a valuation report prepared by an international firm of loss adjusters covering each item of loss;

c. itemized lists of personal property stated to have been lost;

d. copies of invoices in respect of a large proportion of the non-art items of personal property;

e. copies of registration documents in respect of the motor vehicles and boats;

f. a valuation report prepared by a well-known auction house which contained fully catalogued schedules of the Islamic Art Collection identifying all of the stolen items;

g. statements/affidavits from several art specialists and other documents evidencing the existence, quality and extent of the Claimant's Islamic Art Collection, as well as the fact that items

from his collection were often loaned to museums for exhibitions abroad;

h. international press articles and other documents reporting the theft of the Islamic Art Collection and the appearance of stolen items for sale;

i. itemized lists in respect of repair work to the Claimant's house and garden accompanied by quotations and receipts for repairs and other work including removal of explosives from his property;

j. witness statements from the Claimant's staff; and

k. a personal statement from the Claimant.

17. In his personal statement, the Claimant describes the circumstances which gave rise to the losses. According to the Claimant, Iraqi forces occupied his home on 13 August 1990. He had left Kuwait a few days earlier, leaving his household staff in his home. His staff witnessed the arrival of the Iraqi troops who forced them to leave the premises. The Claimant's home is located on a beach close to Kuwait City and it is for that reason, the Claimant states, that the Iraqi troops used the house as a staging post.

18. The photographs and a video recording showed the state of the house after the liberation of Kuwait. Documents and markings on walls, as seen in the video recording, identified various units of the Iraqi army that had been based at the house. In his statement the Claimant listed the names of some of the Iraqi units and their commanding officers who were stationed in the house. Trenches were dug in the garden and on the beach in front of the Claimant's house. The Claimant submitted many papers naming persons who had occupied the trenches.

19. Iraq's response contains certain objections to the Claim - essentially, that the Claimant fails to identify the individuals responsible for the alleged theft of the Islamic Art Collection and that there is insufficient evidence of the loss or damage. Iraq's response makes no reference to the issue of valuation and contains no specific comments on the evidence furnished with the claim form, in particular, the allegation and evidence that Iraqi troops occupied the Claimant's house, caused damage to the house, and emptied it of its contents.

A. The non-art claim

20. In addition to occupying his house, the Claimant alleges that the Iraqi troops removed items of personal property from the house. Among the items that the Claimant states were lost and for which he seeks compensation are: the entire contents of his and his family's wardrobe; audio visual and electrical items such as television sets, video recorders, hi-fi equipment, refrigerators, cookers and freezers, microwave ovens,

washing machines and satellite equipment; household furniture such as bedding, recreational items, lamps and various antiques; and one piece of jewellery.

21. The Claimant also seeks compensation for two boats, a 28-foot yacht and a support vessel, which were left moored to the beach outside his residence when he left Kuwait. Further, he seeks compensation for five motor vehicles. The Claimant states that while the boats and motor vehicles were insured, the insurance coverage did not include losses due to war and therefore he was not able to recover any compensation under the insurance policies.

1. Ownership

22. The Claimant submitted itemized lists and original invoices for many of the electrical items, household furnishings and other effects claimed to have been lost. He also submitted copies of the original registration and insurance documents, invoices in respect of each of the boats and motor vehicles, and drop registration certificates for the motor vehicles. 11/

23. The Panel is satisfied that there is sufficient evidence of ownership of most of the items claimed as part of the non-art claim and has recommended compensation in respect of only those items for which documentary evidence was provided.

2. Fact of loss

24. The available evidence of the occupation of the house by Iraqi troops, witness statements, the papers identifying the troops that had been stationed there, as well as photographs and other documentary evidence tendered by the Claimant, demonstrated that the house had been emptied of almost all its contents; that it had suffered extensive physical damage; and that the Claimant's vehicles and boats were either destroyed or stolen. The Panel finds therefore that there is sufficient evidence establishing that the Claimant lost his personal property as a result of Iraq's invasion and occupation of Kuwait.

3. Valuation

25. In addition to the itemized lists and original invoices, the Claimant submitted a report prepared by a well-known international firm of loss adjusters. That report sets out the values originally stated by the Claimant for the items in the non-art claim. The Claimant's loss adjusters reviewed the items and adjusted some of the values. The Claimant seeks compensation in the amounts as adjusted by the loss adjusters he retained.

26. The method of valuation that was adopted by the Claimant's loss adjusters was to establish a replacement cost as of 2 August 1990 as the base value, establish the annual depreciation rate and apply a compound depreciation rate to the base value.

27. In its evaluation of the non-art claim, the Panel also felt it desirable to obtain the assistance of outside expert consultants in respect of the valuation of all the items except the motor vehicles.

28. The Panel's experts reviewed the valuation undertaken by the Claimant's loss adjusters and found that the methodology applied, including the annual depreciation rates used in respect of various items claimed, represented a reasonable assessment of the Claimant's loss.

29. In valuing the Claimant's motor vehicles, the Panel applied the methodology it adopted for D4 motor vehicle claims ("D4 (MV)") as described in the First Report at paragraphs 259 to 274.

4. The Panel's determination with respect to the non-art claim

30. Having reviewed the available evidence as described above, the valuation report of the firm of loss adjusters retained by the Claimant, and the reports submitted by its own experts, the Panel determines that the Claimant should be compensated US$670,822.69 in respect of the non-art claim and recommends accordingly.

B. The art claim

1. The Islamic Art Collection

31. The Claimant states that it was a well-known fact in the art world that he had built up an "unparalleled" collection of ancient and rare Islamic art and a collection of rare books. He further states that the Iraqis were aware of the existence of the Islamic Art Collection. The collection comprised rare ceramics, glass, wood, stone, metalwork, textiles, manuscripts, early printed books and other art forms. The Claimant asserts that the metalwork in particular was unmatched in any public or private collection. In the decade prior to the invasion, the Claimant loaned objects to nearly every major exhibition of Islamic art and to museums in different cities.

32. The Claimant had built a vault in the basement of his home for purposes of safeguarding the Islamic Art Collection and the Book Collection. The vault was protected by a steel grille door. The Claimant alleges that Iraqi military personnel broke open the steel door and that the art work and books contained in the vault, together with other pieces of art displayed throughout the Claimant's home, were "systematically" removed by the Iraqi military personnel. The Claimant was able to hide some of the more valuable pieces of the Islamic Art Collection in his garden and these were not found by the Iraqis and therefore saved.

33. So far as the theft of the Islamic Art Collection is concerned, the Claimant has submitted information showing that, by a letter dated 14 March 1991 (i.e., immediately after Iraq's occupation of Kuwait was ended), the Permanent Representative of Kuwait to the United Nations informed the

President of the Security Council of the theft of the Claimant's art collection. With a further letter dated 17 June 1991 to the President of the Security Council, the Permanent Representative sent a list of antiquities, works of art, manuscripts and books seized from the Claimant's residence during the invasion and occupation of Kuwait. 12/

34. In response to a letter from the United Nations Assistant Secretary-General for General Services and Coordinator for the Return of Kuwaiti Property, the Minister Plenipotentiary and Acting Director in the Department of International Organizations and Conferences in Iraq, by letter dated 10 July 1991, confirmed that the Iraqi Government had removed works of art from Kuwaiti museums, which were being returned, but then went on to state:

> "With regard to the request for antiquities belonging to personal collections, such as the [Claimant's] collection, the specialists of the Iraqi Department of Antiquities were at the time entrusted with the task of removing the contents of official museums. Their duties did not include any attention to personal collections, since many Kuwaiti nationals were present in Kuwait at the time and were able to take care of their personal assets either themselves or through their representatives. Nor did we have any information at that time of such a collection: the Iraqi antiquarian authorities are concerned exclusively with official museums."

35. Iraq's response reiterated that the Government of Iraq had already returned all of the officially alleged (stolen) properties to Kuwait through a United Nations representative and asserted that the claims made by Kuwait through that representative did not contain any reference to the loss of the Claimant's properties. In light of the statement referred to in paragraph 34 above, this last assertion appears to be incorrect as the Iraqi authorities acknowledged the United Nations Assistant Secretary-General's reference to the Claimant's loss but took the position that they were only concerned with properties of official museums and disclaimed any responsibility for loss of the personal collection.

36. The Claimant reported the theft of his personal property, including the Islamic Art Collection, to the police authorities in Kuwait, who in turn exchanged information on the loss of the art work with other police forces worldwide through Interpol. The Claimant stated that a number of his pieces appeared for sale in various places, namely Iraq, Jordan and the United Kingdom. As at the date of the submission of the Claim, the Claimant had been able to repurchase nine pieces of the collection from various sources but at prices higher than those that he had paid for them. As at the date of submission of the Claim, two pieces of the collection were the subject of a police investigation in the United Kingdom, while other pieces were in the custody of police authorities in Switzerland who had seized them from persons attempting to bring them into the country for sale.

(a) Ownership

37. The Claimant asserts that 330 items were lost. In support of his ownership of the items lost, apart from a catalogued list from his valuer, the Claimant submitted affidavits from various persons worldwide who had seen his Islamic Art Collection in his home from time to time or otherwise had first-hand knowledge of the collection.

38. An art dealer specializing in Islamic art in Kuwait attested to being familiar with the collection and to having seen literally every piece of the collection, the last time being as late as three days before the invasion.

39. A large part of the Claimant's collection had been featured in an exhibition of Islamic art held in Copenhagen in March 1987. The director of the museum that hosted the exhibition attested to having received items on loan for the exhibition from the Claimant. The director had travelled to Kuwait, seen the Claimant's collection in his home, and together with the Claimant, selected pieces for the exhibition in Copenhagen. He also recalls having seen most of the objects that were subsequently stolen, at the Claimant's home. The pieces loaned for the Copenhagen exhibition were featured in a catalogue which was submitted as evidence by the Claimant. In all, the exhibition featured 109 pieces from the Claimant's collection, and included 47 of the 330 pieces which the Claimant asserts he lost.

40. Further evidence of the Claimant's ownership includes the following:

a. The curator at the Metropolitan Museum of Art, New York, confirms having known the Claimant since 1978 and having visited his home in Kuwait on several occasions, thus having had an opportunity to see the Claimant's "very remarkable collection of Islamic art" and to have seen this collection grow so as to become one of the best in private hands anywhere in the world; and furthermore, that objects from the collection were loaned by the Claimant to the museum from time to time since 1978.

b. A professor of history at the Institute for the History of Science in Germany observes in a statement that: "the [Claimant's] collection, which rivals small collections in many European and American museums but is more historically important than the majority of them, shows all the signs of having been gathered with meticulous care and excellent judgement and taste. Among the instruments is one piece signed by the celebrated astronomer al-Khujandi: it is the most important Islamic astrolabe from the early period and is one of the two most important Islamic astrolabes in existence today." Being engaged in preparing a catalogue relating to the History of Science, he goes on to state that his "forthcoming description of the instrument by al-Khujandi alone will substantially increase our knowledge of astronomical instrumentation and in particular of astronomy in general in tenth-century Iraq."

c. A researcher at the National Centre for Scientific Research in Paris, engaged in art historical studies relating to the Islamic field for some 25 years, confirms having visited Kuwait on two occasions (in 1982 and 1984) and thus having had occasion to study the Claimant's collection in depth. He describes the collection in the following terms: "It is remarkable for its outstanding level of quality especially in metalwork and pottery, two areas on which this writer has done extensive research. The presence of several silver-inlaid brass vessels with princely or royal dedications; the acquisition of famous pieces from the great European collections formed earlier in this century, often known through publications familiar to every art historian in the field; and, not least, the presence of a number of works of art - bronzes, manuscripts, glass - so far unique to the collection and revealing the existence of hitherto unknown aspects of Islamic art, give the [Claimant's] collection a unique character as well as considerable importance to the art community world wide."

d. A curator at the Ashmolean Museum at Oxford in England, another Islamic art historian, confirms having visited Kuwait and having seen the Claimant's collection, a part of which he catalogued at one time. He describes the collection as: "one of the most important internationally, whether in private or public hands. In it was a unique group of manuscripts and miniatures, including what must have been the only early Abbasid Quran surviving in a complete state, and the superbly illustrated manuscript of the Sulwan al Muta, dating from the Mamluk period. The collection was very rich in wood; it contained examples of the finest marble capitals from Cordova, and in it were many other rarities in ivory, glass and other media. Most numerous were its ceramics, where among the hundreds of top quality pieces were particularly important groups of early Mesopotamian wares, and large and important groups of Raqqa and Damascus medieval glazed wares. Outstanding among the latter was the jar from the Maristan of Nur al-Din in Damascus.

" For me, however, it was the metalwork which made this collection not just an outstanding gathering of important objects, but the most important single collection of Islamic metalwork in the world.

" ... it was arguably the richest collection of Islamic metalwork anywhere in the world, richer than that of the British Museum, richer than that of the Victoria and Albert Museum, to name but the two I know best. And in my experience it was not only a collection of extraordinary beautiful pieces, but also one which had an enormous potential for our future understanding of the development of Islamic art."

41. Based on its review of the evidence, and a confirmation by the Panel's own expert (referred to hereafter) that the Claimant was known to have been putting together his Collection since the 1970s, the Panel is

satisfied that the Claimant owned the items of the Islamic Art Collection that he asserts were lost and for which he seeks compensation.

(b) Fact of loss

42. The Background Reports referred to above clearly show that houses and buildings located on Kuwait's coastline, particularly the more expensive and luxurious, were taken over by the Iraqi forces as they had positioned a great number of their troops on the coast as part of their defence. The houses on the coast were not only looted and vandalized but some of their structures were damaged. Witness statements, the video recording, the photographs and other evidence tendered by the Claimant, establish that the Claimant's house and the trenches on the beach in front of the house were in fact occupied by different units of the Iraqi Army. This evidence, together with evidence of the extensive repairs that had to be carried out on the house, also shows that the Claimant's house had been ransacked, damaged and was devoid of much of its contents and the art collection.

43. The Panel is satisfied that the evidence that the vault (which contained much of the Islamic Art Collection) was broken into and left empty corroborates the Claimant's assertion that his valuable collection was stolen. In addition, the fact that the Claimant's loss was reported to the Security Council immediately after Iraq's occupation of Kuwait had ended in March 1991; the evidence showing the appearance of a considerable number of pieces from the Claimant's collection for sale in different countries and newspaper reports of this fact; and the recovery of certain items by seizure and repurchase, all together establish that the Claimant not only possessed the Islamic Art Collection, but lost the Collection as a result of Iraq's invasion and occupation of Kuwait.

(c) Valuation

44. In support of the compensation claimed for the loss of the Islamic Art Collection, the Claimant submitted a valuation report prepared by a well-known international auction house. The valuation was based on photographs of many of the items supplied by the Claimant.

45. In addition to the auction house valuation, the Claimant provided details of insurance replacement values for the 109 items that were featured in the exhibition in Copenhagen in 1987. The Danish authorities' insurance documentation shows that the total value of all 109 items was US$14,945,000.00.

46. The auction house valued the items on the basis of the purchase price or cost of replacing them with comparable items in similar condition by purchase in the normal retail market as of 2 August 1990. The report of the auction house was also reviewed by the Claimant's loss adjusters who affirmed that in their view the value arrived at by the auction house was a correct representation of the Claimant's loss.

47. Iraq's response made no reference to the issue of the valuation of the Islamic Art Collection. This placed a greater burden on the Panel in its assessment of the issue of valuation.

48. Due to the difficulty of arriving at an objective valuation for a collection of art such as that owned by the Claimant, the Panel decided to seek the assistance of its own expert in assessing the value of the Islamic Art Collection. From a list of Islamic art experts, compiled by the secretariat with the assistance of the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Panel selected an internationally known expert in Islamic art, who was then appointed to assist the Panel.

49. On the basis of photographs, the museum catalogue and the illustrations provided, the Panel's expert was able to determine a value for most of the items in the Islamic Art Collection. Taking into account all the materials provided by the Claimant, as well as the report and the responses of the Panel's expert on various issues raised by the Panel in the course of a discussion, the Panel was able to arrive at what it considers a reasonable valuation of the Claimant's Islamic Art Collection.

(d) The Panel's determination with respect to the Islamic Art Collection

50. Having reviewed the evidence submitted by the Claimant, the Claimant's own valuation report, the report of the Claimant's loss adjusters, and the report submitted by the Panel's own expert, the Panel determines and recommends that the Claimant should be compensated US$16,809,120.00 for the loss of the Islamic Art Collection.

2. The Book Collection

51. The loss of the Book Collection was also reported in the letter dated 17 June 1991 to the President of the Security Council, submitted by the Permanent Representative of Kuwait to the United Nations, and referred to in paragraph 33 above. The Claimant provided lists of the lost books in the following eight categories: early printed books in Arabic (1505 - 1810); early Latin editions of Arabic Books of Science and Medicine; important and rare reference books and exhibition catalogues; large format, illustrated travel, architecture, natural history and maps; periodicals; institutional publications on Near Eastern and Islamic art and archaeology; a library of Arabic books; and rare books in Arabic printed after 1810.

(a) Ownership

52. The Claimant furnished a number of statements from individuals who had knowledge of the Book Collection. A renowned Scandinavian architect who designed the Claimant's house confirms that in order to meet the Claimant's requirement for housing his Islamic Art Collection and the Book Collection, he designed a basement under the whole house with a strong room for the objects of art and a smaller humidity-controlled room for

manuscripts and very old books and two other rooms mainly for books. The architect speaks of having an interest in such collections, and of having spent considerable time looking at the Claimant's collection of books dealing with art, archaeology, architecture (many from Egypt) and very early Latin books and early Arabic printing (1505-1810 A.D.) - for which the humidity-controlled room was specially designed - and books on many other subjects. The Claimant also submitted a Danish architectural magazine from 1987 which featured the Claimant's home. The magazine showed the exterior of the house, pictures of various rooms within the house, and highlighted pictures and a plan of the basement of the house which had been specially designed to display the Book Collection.

53. Statements were also provided from well-known sellers of rare books and manuscripts, indicating that the Claimant had been engaged in collecting rare books and manuscripts for many years. A bookseller from New York confirms that the Claimant had purchased complete libraries of Oriental books, periodicals, papyrus and other old and rare antiquarian books and manuscripts. Another bookseller from The Netherlands confirms that the Claimant had frequently purchased from him rare and old Oriental and Arabic editions published in 16th and 17th Century Europe as well as old Arabic editions published in the Near East in the 19th Century. The director of the National Centre for Scientific Research in Paris who, for the purpose of his own research, had visited the Claimant's house in Kuwait and used his library, describes it as a:

> "vast library of Western books dealing with the art, literature and thinking of the Islamic world. He had all the unobtainable rarities, from the original edition of F.R. Martin's book, to the books on rugs produced earlier in this century in Germany, complete sets of journals not easily found and, not least, a probably unique library of early Arabic editions produced in Italy (Fano), even Spain, Germany and elsewhere. The loss of his library is a calamity to him but also to Kuwait and more broadly the world of scholarship."

54. Another collector states he had visited the Claimant's library regularly and had studied his books extensively. He goes on to describe the Claimant's collection as one of the finest private collections he had seen. The Panel finds the above, together with all the other evidence provided by the Claimant, sufficient to prove the Claimant's ownership of the Book Collection.

(b) Fact of loss

55. Based on the above evidence submitted by the Claimant as to his ownership of the Book Collection and other evidence as referred to in paragraphs 42 and 43 above which showed that the Claimant's house had been occupied by Iraqi troops and had been emptied of all its contents, the Panel is satisfied that the Claimant lost the Book Collection as a result of Iraq's invasion and occupation of Kuwait.

(c) Valuation

56. In view of the expertise needed to value the books, the Panel sought the assistance of one of the leading valuers of books in Europe. This expert considered the evidence submitted by the Claimant sufficient to provide a clear identification of each particular edition and submitted a detailed valuation.

57. The expert stated that the value of the majority of the books listed could be estimated on the basis of the value of other copies of the same editions. Where no record of a particular title existed, a process of analogy with similar types of books was applied. The Panel's expert submitted a valuation significantly higher than the amount claimed. 13/

(d) The Panel's determination with respect to the Book Collection

58. Having reviewed the evidence submitted by the Claimant, the Claimant's own valuation report, and the report submitted by the Panel's expert, the Panel determines that the Claimant should be compensated US$2,000,000 for the loss of the Book Collection, this being the lower of the amount claimed and the valuation by the Panel's own expert.

VI. THE REAL PROPERTY CLAIM

59. In describing the damage to the home caused by the Iraqi troops, the Claimant states that there was spray-painted graffiti on the walls, damage to interior and exterior walls, storage areas, electrical circuits, plumbing and to the Claimant's garden. In addition, the area surrounding the house was planted with land mines.

60. The Claimant submitted a claim in respect of the costs of repairs to his house and the surrounding area. In support of this portion of the claim, the Claimant submitted evidence in the form of witness statements, a video tape, photographs and other material which showed extensive damage to the house and grounds, as well as a schedule of labour charges and invoices for the full amount claimed to carry out repairs in respect of the damage. This portion of the claim was also reviewed and confirmed by the firm of loss adjusters retained by the Claimant.

A. Ownership

61. The Claimant submitted copies of his title deeds, which showed that the Claimant is the owner of the property.

B. Fact of loss

62. As stated in paragraph 24, the Panel accepts the Claimant's personal statement, witness statements, the video recording, photographs and details of the repairs carried out as evidence sufficient to prove that the

Claimant's house was damaged as a result of Iraq's invasion and occupation of Kuwait, and necessitated the expenditure on repairs.

C. Valuation

63. The Panel's expert valuation in respect of the non-art claim included a valuation by a chartered surveyor of the real property portion of the Claim. The chartered surveyor analyzed the various areas of repair work undertaken by the Claimant by referring to the invoices and other documentation submitted in support of the Claim and related it to the photographs, video recording and other evidence provided by the Claimant.

64. The Panel's expert found that the scope of the repair work undertaken by the different contractors appeared to be reasonable in relation to the necessary areas of reinstatement and repair work detailed in the Claim. The expert did not consider that any of the work undertaken was in excess of that required as a result of the damage caused by the Iraqi forces. There was no evidence of improvements to the structure or betterment as a result of the work undertaken.

65. Accordingly, the Panel's expert found that the Claimant's loss adjusters were correct in accepting the scope of work undertaken as reasonable; and that the reinstatement costs incurred appeared competitive and reasonably stated.

D. The Panel's determination with respect to the real property claim

66. Having reviewed the evidence submitted by the Claimant and the report submitted by the Panel's expert, the Panel determines that the Claimant should be compensated US$214,576.12 for his real property losses.

VII. OTHER ISSUES

A. Currency exchange rate

67. The Claimant submitted his Claim denominated in Kuwaiti dinars. In accordance with the Panel's recommendation in paragraph 62 of the First Report, the rate of exchange to be applied for converting Kuwaiti dinars to United States dollars is the rate of exchange on the pre-invasion date, i.e., the rate in effect on 1 August 1990. 14/

B. Interest

68. In paragraph 7 of decision 16, the Governing Council has provided that: "Interest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful Claimants for the loss of use of the principal amount of the award." 15/ The Governing Council further specified that: "Interest will be paid after the principal amount of awards", and decided that the methods of calculation and payment of interest would be considered at the appropriate time. 16/

The Panel therefore recommends the award of interest to the Claimant for his loss as of 2 August 1990, to be calculated at a future date.

VIII. RECOMMENDATION

69. Based upon the findings and determinations noted in this report, the Panel recommends that the Claimant be awarded a total of US$19,694,518.81 broken down as follows: US$670,822.69 for the non-art claim; US$16,809,120.00 for the Islamic Art Collection; US$2,000,000.00 for the Book Collection; and US$214,576.12 for the real property claim. The Panel respectfully submits this report through the Executive Secretary to the Governing Council pursuant to article 38(e) of the Rules.

Geneva, 5 February 1998

(signed) R.K.P. Shankardass
Chairman

(signed) H.M. Joko-Smart
Commissioner

(signed) M.C. Pryles
Commissioner

Notes

1/ S/AC.26/1991/10.

2/ S/AC.26/1998/1.

3/ Three sets of outside expert consultants were retained to assist in the review of the Claim. One set of experts reviewed the non-art personal property claim and the D7 real property claim; another expert reviewed the claim in respect of the Islamic Art Collection; and another expert reviewed the claim concerning the Book collection.

4/ See part VI of the First Report.

5/ See para. 76 of the First Report.

6/ S/AC.26/1996/R.16.

7/ See paras. 19-29 of the First Report.

8/ S/22409.

9/ Ibid., paras. 9-10.

10/ S/22535, para. 367.

11/ As part of the methodology for D4 (MV) claims, the Panel accepted a drop registration certificate as proof of ownership and loss. Drop registration certificates were issued by the Traffic Department in Kuwait after the invasion, in order to certify deregistration of a motor vehicle due to loss or destruction of the vehicle as a result of the invasion and occupation of Kuwait by Iraq. See First Report, paras. 259-274.

12/ S/22709.

13/ See para. 272 of the First Report. In that paragraph, the Panel stated the following: "Generally speaking, a claimant should not be awarded more than the claimed amount".

14/ See note 31 of the First Report.

15/ S/AC.26/1992/16.

16/ Ibid., paras. 2-3.

Annex II

Decision concerning part two of the first instalment of individual claims for damages above $100,000 (category D claims) taken by the Governing Council of the United Nations Compensation Commission at its 77th meeting, held on 11 March 1998 at Geneva*

The Governing Council,

Having received, in accordance with article 38 of the Provisional Rules for Claims Procedure, the report of the Panel of Commissioners appointed to review individual claims for damages above US$100,000 (category "D" claims), covering one individual claim,[1]/

1. Approves the recommendations made by the Panel of Commissioners, and, accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amount of the recommended award of US$19,694,518.81 concerning the claim submitted by the Government of Kuwait covered in the report,

3. Reaffirms that when funds become available payments shall be made in accordance with Decision 17 [S/AC.26/Dec.17 (1994)],

4. Recalls that when payments are made in accordance with Decision 17 [S/AC.26/Dec.17 (1994)] and pursuant to the terms of Decision 18 [S/AC.26/Dec.18 (1994)], the claimant's Government shall distribute amounts received in respect of the approved award within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution,

5. Requests the Executive Secretary to provide a copy of the report to the Secretary-General, the Government of Kuwait and the Republic of Iraq.

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* Previously issued as document S/AC.26/Dec.49 (1998).

[1] The text of the report is attached hereto (document S/AC.26/1998/3) [see annex I].

Annex III

Report and recommendations of the Panel of Commissioners concerning part two of the first instalment of claims by Governments and international organizations (category F claims)*

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* Previously issued as document S/AC.26/1998/4.

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Introduction

1. The Panel of Commissioners responsible for category "F" claims (the "Panel") was appointed by the Governing Council of the United Nations Compensation Commission at its twenty-first session on 22-23 July 1996. On 20 March 1997, the first instalment of eleven "F" claims was submitted to the Panel. In a procedural order dated 21 March 1997, the Panel noted its decision to classify two of the claims in the instalment as "unusually large or complex" claims, pursuant to article 38(d) of the Provisional Rules for Claims Procedure (the "Rules"). 1/ On 20 September 1997, the Panel issued its report and recommendations concerning part one of the first instalment of claims by Governments and international organizations (the "First 'F' Report"). 2/ The recommendations of the Panel were approved by the Governing Council on 17 December 1997. 3/ This report contains the Panel's findings and recommendations regarding the two remaining claims of the first instalment.

2. The claims considered in this report were filed on 18 March 1994 by the Government of Kuwait on behalf of the Kuwait Ministry of Foreign Affairs (the "Ministry") and Kuwait University (the "University") (collectively the "Claims" and the "Claimants"). They are the first Government claims submitted by Kuwait to be reviewed by a panel of Commissioners. The Ministry seeks compensation in the amount of US$34,948,111.00 plus interest. Its submission consisted of a one volume statement of claim and three volumes of supporting documents, including reports by expert accounting and engineering firms, witness statements and various documents. The University seeks compensation in the amount of US$25,263,186.00 plus interest. Its submission consisted of one large volume containing a statement of claim as well as reports by expert accounting and engineering firms, witness statements, various other documents and a video tape entitled "Direct Losses of Kuwait University as a Result of Iraqi Aggression". Both Claimants stated that additional documents supporting the Claims were held in the Government Claims Document Repository of the Public Authority for the Assessment of Compensation for Damages Resulting from Iraqi Aggression ("PAAC") and were available for inspection by the Commission.

3. The Executive Secretary of the Commission included the Claims in his report to the Governing Council dated 31 July 1996. In accordance with article 16 of the Rules, the report was circulated to the members of the Governing Council, to the Government of the Republic of Iraq ("Iraq"), and to Governments and international organizations that had submitted claims. Pursuant to article 32, paragraph 1, of the Rules, a number of Governments, including Iraq and Kuwait, submitted additional information and their views on the Executive Secretary's report to the secretariat, which transmitted them to the Panel.

I. PROCEEDINGS

4. On 21 March 1997, the Panel issued its first set of procedural orders with respect to the Claims. The orders had three primary components.

First, they classified the Claims as "unusually large or complex", thereby giving notice that they would be reviewed within twelve months. *Second*, the orders requested that the Claimants submit to the Commission a list of all documents supporting the Claims that were held in the PAAC document repository. Third, the orders instructed the secretariat to transmit to Iraq the statements of claim and all supporting documents submitted by the Claimants. Pursuant to article 36 of the Rules, the Panel invited Iraq to submit by 19 September 1997, a response to the statements of claim together with all documents Iraq intended to rely upon in the proceedings. On the Panel's instructions, the secretariat transmitted copies of such orders to the Claimants and Iraq.

5. On 12 April 1997, the Claimants submitted lists of documents held in the Document Repository with a brief description of each document. With the assistance of the secretariat and expert loss adjusting consultants retained by the Commission, the Panel reviewed the Statements of Claim, the supporting documents and the lists of documents submitted by the Claimants in response to the first set of procedural orders. Following this review, on 30 June 1997, the Panel issued a second set of procedural orders which requested that the Claimants supply the Panel with additional information and documents necessary to verify the Claims. On 24 September 1997, the Claimants submitted documents and written responses to the June orders.

6. On 5 September 1997, counsel for Iraq submitted a written request for an extension of the time limit set by the Panel for Iraq to file its responses to the Claims. The request was based on the ground that Iraq had encountered certain problems beyond its control in retaining counsel and its efforts to prepare a response had thus been delayed. In view of the unusual circumstances set forth in the request and because the granting of an extension of time in this specific case would not prevent the Panel from completing its review of the Claims within the prescribed time limits, the request for an extension was granted and Iraq was given until 14 December 1997 to file its responses and supporting documents.

7. The same order also gave notice to the Claimants that the Panel intended to have an on-site inspection in Kuwait. From 28 November to 3 December 1997, an inspection team comprised of an accountant, a loss adjuster, a quantity surveyor and two secretariat legal officers performed the on-site inspection at the Claimants' premises in Kuwait.

8. On 2 December 1997, Iraq filed its response to the Ministry's Statement of Claim. Iraq did not file any documents or evidence in support of its written response. Thereafter, Iraq filed its response to the University's Statement of claim. Iraq also commented on the requests for additional information and documents directed to the University that were set forth in the Panel's 30 June 1997 Procedural Order. Iraq's response was supported by written statements from Professor Akram M. Subhi, the President of the University of Basrah, and Dr. Mahir Ismail Ibrahim Al-Ja'afari, the Under-Secretary of the Ministry of Education, both of whom

worked as Iraqi officials at the University during part of the occupation of Kuwait.

9. In its proceedings, the Panel held regular sessions with the assistance of the secretariat. These sessions were conducted in private at the Commission's headquarters in Geneva. Pursuant to article 34 of the Rules, the secretariat provided administrative, technical and legal support to the Panel. As already noted, expert loss adjusting consultants were retained by the Commission to assist the Panel and the secretariat in reviewing the Claims.

II. THE CLAIMS

10. Pursuant to Governing Council decision 7, 4/ the category "F" claim form used by Governments for submitting their claims classifies losses under eleven headings. The claims considered in this report are briefly described below by loss type. The amounts claimed for the various losses are summarized in paragraph 84 below.

A. The Claimants' contentions

1. The Ministry of Foreign Affairs

(a) Real property

11. The Ministry's real property damage claim relates to damage at its headquarters in Kuwait City, its Embassy to Iraq in Baghdad and its Consulate in Basra, Iraq.

12. According to the Claimant, at the time of the invasion, the Ministry "occupied modern facilities built in 1983 and situated on the Arabian Gulf in the heart of Kuwait City". The Claimant asserts that the

> "Iraqis arrived at the Ministry building at 11:00 a.m. on the morning of the 2nd of August.... After the takeover of the Ministry building, the Iraqis camped out in the offices, turning them into squalid living quarters. While there, they perpetrated a systematic theft of the building's contents, stripping everything of value for shipment to Iraq."

13. The Claimant states that, following the liberation of Kuwait, it was required to repair "windows, doors and the interior and exterior surfaces of the building, as well as the Ministry's special vaults". The repair work also involved "restoring the electrical and communications equipment and automation systems that formed part of the building's fixtures". The Claimant contends that the "basic measure of Kuwait's real property losses for the Ministry ... is what it has cost, or will cost, Kuwait to perform the necessary repairs".

14. The Claimant states that Kuwait's Embassy and the residence of its Ambassador in Iraq were "located on parcels of land ... that were transferred to the State of Kuwait by Iraq. Kuwait does not make a claim here for the land in Baghdad, because that land still legally belongs to Kuwait". In 1989 Kuwait built a new Embassy and Ambassador's residence on that land in Baghdad.

15. The Ministry claims that "[n]o one from Kuwait has had access to the Embassy in Baghdad since the unlawful invasion of Kuwait by the Iraqi regime in 1990". Thus, it concedes that "there is no way of knowing exactly what the condition of the structure now is". The Claimant now "asserts a claim for the loss of use of its Embassy in Baghdad based upon the cost of construction, less depreciation".

16. Prior to the invasion of Kuwait, the Ministry also maintained a Consulate in Basra. Like its Embassy, the Consulate "was originally located on land belonging to the State of Kuwait". The Consulate building was, however, "damaged in the war between Iraq and Iran and at the time of Iraq's invasion of Kuwait" and had not been repaired. Accordingly, the Claimant had been renting other office space for its Consulate in Basra. The Ministry now asserts a claim for the "loss of use" of its damaged Consulate building. It also seeks compensation for the rent that it prepaid for its rented Consulate offices.

(b) Tangible property

17. As noted above, the Claimant states that "Iraqi forces systematically removed" from the Ministry headquarters

> "... almost every removable piece of property, including priceless historical papers, furniture, computers, telecommunications equipment (including special encoding equipment for diplomatic messages), vehicles, historical papers, the library collection, valuable State gifts and the currency in the Ministry's safe".

18. In its statement of claim, the Ministry summarized each of the categories of tangible property stolen or damaged at its headquarters and the methods that it used to measure the loss of the various items.

19. The Ministry also claims that it possessed furniture and vehicles at its Embassy in Baghdad and its Consulate in Basra. It states that "all of these items were in Iraq at the time of the invasion ... [and] Kuwait has been unable to use these assets ... [or] to perform maintenance that would be necessary to preserve them ..." The Claimant contends that the valuation of this loss should be the "purchase price of the assets" less depreciation.

(c) Payment or relief to others

20. The Ministry states that the "Council of Ministers of the State of Kuwait" adopted a resolution on 28 April 1991 requiring the Claimant and other Government ministries to pay "salaries for the seven-month occupation period and the three month emergency period immediately following the liberation to its [Kuwaiti] employees ..." The purpose of paying these back salaries was to help "alleviate [the employees'] suffering and financial hardship as a result of the Iraqi invasion and occupation". The Ministry now seeks compensation in the amount of the relief payments that it was required to pay to its Kuwaiti employees by the Government of Kuwait.

(d) Public service expenditure

21. The Ministry claims that it has "incurred additional cost since liberation re-creating the record of Kuwait's treaties with Iraq, which were all stolen or destroyed, and reverting to a manual system of archiving its records pending delivery of a new computer". With respect to the allegedly lost treaties, the Claimant states that "a special project had to be undertaken after liberation to recreate this lost record". According to the Claimant, most "of this work has taken place in Paris, where special advisors were retained to carry out this important work". The Claimant alleges that as a consequence of the destruction of its treaty record, Kuwait needed to send "ambassadors around the world to distribute and explain the treaties and documents recreated in Paris so that Kuwait's borders with Iraq can be reconfirmed".

22. The Ministry claims that it incurred other costs due to the loss of its archiving computer when it employed "five people for 2 ½ years" after the liberation to manually archive documents.

(e) Interest

23. The Ministry claims interest in the amount of US$5,554,080.00 on its claim.

2. Kuwait University

(a) Real property

24. According to the Claimant, at the time of Iraq's invasion and occupation of Kuwait, the University had nine colleges located on five campuses in and around Kuwait City. The University claims that following the invasion of Kuwait, Iraq turned the University into a military post. It states that "[t]renches and bunkers were dug in the campus plazas and gardens and Iraqi troops lived in and controlled access to the University facilities". The Claimant asserts that, during the period of the occupation, its facilities

"... were systematically looted, vandalized and destroyed. Every piece of useful furniture, equipment and machinery was stolen from University classrooms, laboratories and offices. University buildings suffered internal and external damage ... such as smoke and burn damage from fires, broken doors and windows, smashed walls, floors and ceilings. Plumbing, air conditioning, heating and electrical parts and building fixtures were ripped out of many buildings and stolen".

25. After the liberation of Kuwait, the Claimant commenced an "Emergency Plan involving intensive and costly repairs to the University facilities" in an effort to re-open the University for the 1991 autumn term and to take care of the most urgent repairs. The University claims that it executed "167 contracts for repair of University facilities damaged during Iraq's invasion and occupation of Kuwait" and contends that the "measure of [the University's] real property loss is the cost to repair damages caused as a result of Iraq's invasion and occupation of Kuwait". Accordingly, it seeks reimbursement for the money expended with respect to the 167 repair contracts.

(b) Contract

26. In addition to the physical damage to the University premises, the University claims that "Iraq's occupation of [the University] also resulted in the interruption of ongoing construction projects for upgrading of University facilities". The Claimant contends that at the time of the invasion two construction projects were in progress but that the contracts were "halted on 2 August 1990 as a result of the invasion and accompanying breakdown in civil order". Both contracts were also terminated on that date "[p]ursuant to Order No. 148 of Kuwait's Council of Ministers, meeting in exile on 27 January 1991".

27. After the liberation of Kuwait, the construction company, whose contracts had been terminated, "refused to work on the projects for the original contract prices; rather it demanded a substantial price increase over the original contract amounts to account for increased labor and material costs in Kuwait". The University "decided to negotiate with [the contractor] rather than publicly tender completion of the projects ... [and] agreed to a 12.5% increase over the original contract amount on each contract ... to complete the two interrupted projects".

28. The Claimant argues that the proper measure of its "contract losses is the amount over the original contract prices that the University had to pay to complete the projects interrupted by Iraq's invasion of Kuwait".

(c) Interest

29. The University claims interest in the amount of US$4,014,760 on its claim.

B. Iraq's responses

1. The Ministry of Foreign Affairs' claim

(a) Real property and tangible property

30. Iraq's response raises a number of general and specific objections to the Ministry's real property damage and loss of tangible property claims. In essence these objections are summed up by Iraq's argument that many of the alleged losses "lack proper evidence and documents. The claim which is not supported by substantive documents does not give the Claimant any right to compensation."

31. Furthermore, Iraq challenges the probative value of the witness statement of the Ministry's maintenance engineer, Mohammad Latif Chohan, noting that in many instances his testimony is not corroborated by documents.

32. With respect to the Ministry's claim for loss of use of its Embassy and its Ambassador's residence in Baghdad, Iraq states that the "two buildings are in normal condition". Iraq also states that the "status of these two buildings is similar to the status of the Embassies of other states which severed their diplomatic relations with Iraq". Moreover, Iraq concedes that the "two buildings are Kuwaiti property that Kuwait can use after the resumption of the normal relations between the two countries".

33. The Claimant cannot, Iraq contends, claim that it has lost any tangible property at the Embassy "unless the Kuwaiti side checks the Embassy's assets in order to determine the losses". Iraq then notes that it "has a large building for its Embassy in Kuwait, as well as the residence of the Ambassador, including their furniture, cars and other assets. They are now in the possession of the Kuwaiti authorities". According to Iraq, both the Kuwaiti Embassy in Baghdad and the Iraqi Embassy in Kuwait "and their assets are subject to the provisions of the Vienna Convention on Diplomatic Relations of 1961 rather than the mandate of the UNCC".

34. Iraq also argues that the Ministry's claim for compensation for the rent that it paid for the Basra Consulate offices "is considered as indirect damage. Consequently, it is not subject to the mandate of the UNCC". Iraq suggests another forum for the Claimant to pursue its claim, stating that the "lessee can raise the issue before the Iraqi courts within the framework of the lease agreed upon and in accordance with the principle saying that 'contract is the law of the contracting parties.'"

(b) Payment or relief to others

35. Iraq makes two arguments in response to the Claimant's request to be reimbursed for the back-salaries that it paid its employees. First, Iraq

contends that the "claim does not fall within the [meaning of] direct damage" set forth in Security Council resolution 687 (1991) and, therefore, is not compensable. A second related argument is that the payment of back salaries "relates to the period after Iraq's withdrawal from Kuwait" and Iraq's "responsibility for compensation should be confined to the period of 2 August 1990 to 2 March 1991".

(c) Public service expenditure

36. Iraq contends that the money "paid as an award to the experts who demarcated the borders between Iraq and Kuwait" as well as the cost of "diplomatic activity done by the Kuwaiti Ministry of Foreign Affairs to explain the reasons of the decision demarcating the borders between Iraq and Kuwait" constitute "indirect damages and losses or [are] irrelevant". Thus, such losses, according to Iraq, do not fall within the jurisdiction of the Commission, which is "confined to direct damage or losses resulting from [Iraq's] entry into Kuwait" by paragraph 16 of the Security Council resolution 687 (1991). Iraq takes the same position with respect to the cost incurred by the Ministry to manually archive documents following the liberation of Kuwait.

2. Kuwait University's claim

(a) Real property

37. Iraq's response raises a number of arguments that can be reduced to four basic objections on the merits of the real property damage claim. First, Iraq argues that the "University buildings did not suffer the claimed damage". "We have to bear in mind," asserts Iraq, "that the members of the working teams of the Iraqi Ministry of Higher Education and Scientific Research who were then in Kuwait carried out maintenance and repair so that the University would be able to receive students at the official date for the commencement of the academic year".

38. Second, Iraq asserts that it was not responsible for any damage that did occur to the University.

> "When the Iraqi Team began cooperating to direct Kuwait University for the year 1990/1991, a survey on the conditions of the University buildings in various sites in Kuwait has been made. Afterwards, engineers and technicians have been committed to make necessary preparations for the new academic year. The steps undertaken can be epitomized as follows: The field survey, accomplished on 29 August, 1990, has verified that there were University buildings and utilities scattered in Khaldiyya, Kaifan, Adailiyya, Shwaikh, and the College of Medicine in Jabiyya, listed by the University Administration prior to 2 August, 1990 for maintenance. Some of these include electric lifts services, airconditioning stations, water pumping stations, repairing labs and some study halls, etc. Some offices, together

> with equipment, have been exposed to damage or stealing, as the security men and watchmen of the University offices left their jobs for the period 2-25 July, 1990. This has also been caused by the bad behaviour and disloyalty of a large number of non-Kuwaitis and watchmen who have joined work on 25 August, 1990".

39. Another witness statement asserts that the damage was caused by "Kuwaiti gangs and their agents [who] committed destruction and assassinated several citizens, students and teaching staffs among whom was Dr. Falih, dean of the College of Administration after the explosion of the hotel beside the American embassy, the fire in the College of Science and the theft of some possessions".

40. The same witness went on to note in his statement that when he left Kuwait on 13 January 1991, the University buildings were in good condition. He then speculated that the damage to the University may have occurred after his departure and could have been caused by "gangs or their guards and servicemen or as a result of military operations since Kuwait was considered a battlefield".

41. Third, Iraq contends that by permitting the repair contracts to be placed "by direct order instead of public tender" the University failed to "minimize the loss to the least possible amount and to take reasonable measures to avoid any possible increase in damages". According to Iraq,

> "... the fact that the contracts were executed by direct order ... led to an unnecessary increase in the cost of implementing the works due to lack of knowledge of the prices of competing contractors. Further these procedures open the door for opportunities of exploitation to serve personal interests".

42. Fourth, Iraq argues that the contracts underlying the claim include costs that are not directly related to any damage that occurred during the period of Iraq's occupation of Kuwait. It asserts that the contracts "covered comprehensive maintenance of the buildings and adding extensions to existing ones". Along these lines, Iraq claims the University does not explain how the percentage of repair contracts attributable to Iraq have "been worked out or mention how the engineering team has determined the absence of any additional costs that exceed the damage caused by Iraq's presence in Kuwait". Furthermore, Iraq contends that "there is no mention of any method for working out percentages of depreciation in property and in other fixed assets".

(b) Contract

43. Iraq makes two arguments on the merits of the University's contract interruption loss claim. First, Iraq argues that at the time of the invasion, the contractor had "been too slow in executing the contracts and therefore there is no justification to sign new contracts with it".

Second, Iraq contends that "the new contracts overlooked the materials that had already been provided in the work sites during the execution of the earlier two contracts".

44. Finally, with respect to both the real property and contract interruption losses, Iraq challenges the probative value of the Claimant's witness statements. Iraq argues that, as Kuwaiti nationals, the witnesses are unduly biased against Iraq. Furthermore, because the witnesses were either outside Kuwait or had limited access to the University premises during the occupation, Iraq claims that they lack personal knowledge of the facts stated in their witness statements.

III. LEGAL FRAMEWORK

45. In the First "F" Report, the Panel discussed the legal framework within which the claims of Governments and international organizations would be decided by the Commission. This discussion covered the law applicable to the category "F" claims, the procedural and evidentiary requirements imposed on the Claimants and the Panel's role in the proceedings. 5/ The claims covered by this report, though classified as unusually large or complex, have been considered within the same legal framework as the claims previously reported upon by the Panel.

IV. COMPENSABILITY

A. The Ministry of Foreign Affairs

1. Unsubstantiated losses

46. Several losses within the Ministry's claim are not adequately supported by evidence.

(a) Tangible property

47. First, the Claimant did not produce, in support of its claim for the loss of a historical document collection, a list of the documents constituting the collection or any other evidence to substantiate the claim, even though the purported sale of the documents to the Claimant by a European Government took place relatively recently in 1985.

48. Likewise, the Claimant did not furnish any evidence, other than two unspecific witness statements, in support of its claim that gifts that had been given to the Ministry by foreign dignitaries had been looted by Iraq. Other than stating that "[m]any of the givers of the gifts are dead, and some of the countries they represented no longer exist," the Claimant was unable to identify any of the foreign dignitaries that bestowed the gifts, describe any of the gifts or state the occasions upon which the gifts had been given.

49. Similarly, the Ministry's statement that large amounts of cash were taken from its safes by Iraqi forces is not supported by a particularized statement of claim or by any appropriate evidence. 6/

50. Finally, the Ministry's claim for the loss of tangible property at its Embassy and Ambassador's residence in Baghdad and its Consulate in Basra is not supported by any documentary or other appropriate evidence demonstrating that Iraq has failed to respect and protect the premises of Kuwait's diplomatic property in Iraq, including the Claimant's tangible property and archives. According to the Claimant, the lack of evidence in support of this loss is due to the fact that its personnel are barred from visiting Iraq. In response to the Panel's procedural order, however, the Claimant stated that "Kuwait has not entrusted the custody of its Embassy in Baghdad [and Consulate in Basra] to a third State acceptable to Iraq".

51. In light of the foregoing, the Panel is unable to recommend compensation for the above-mentioned losses because they are not supported by documentary or other evidence sufficient to demonstrate the circumstances and amount of the claimed losses. 7/

2. Indirect losses

52. Several losses within the Ministry's claim do not constitute direct losses within the meaning of Security Council resolution 687 (1991).

(a) Real property

53. The Ministry requests compensation for the "loss of use" of its Embassy and Ambassador's residence in Baghdad and for the "loss of use" of a Consulate building in Basra that has been unoccupied since the Iran-Iraq war when it suffered war damage. The Ministry also seeks compensation for rent that it prepaid on Consulate offices in Basra prior to Iraq's invasion of Kuwait. The Claimant has not used any of its diplomatic premises in Iraq since 2 August 1990 as a result of the absence of diplomatic relations between the States of Kuwait and Iraq.

54. In its submission to the Commission, Iraq concedes that the "two buildings are Kuwaiti property that Kuwait can use after the resumption of the normal relations between the two countries" and states that the "status of these two buildings is similar to the status of the Embassies of other states which severed their diplomatic relations with Iraq".

55. In the First "F" Report, the Panel considered a claim by a Government for the loss of rent that it had prepaid on its Embassy in Kuwait City, which was not used during the period of Iraq's occupation of the city. The Panel found that "the mere permanent or temporary closure of a diplomatic mission, even in time of armed conflict, does not give rise to a claim for compensation". 8/ In such situations, under article 45 of the Vienna Convention on Diplomatic Relations of 1961, the only obligation of the

receiving State, even in the case of armed conflict, is to "respect and protect the premises of the mission, together with its property and archives". 9/

56. Accordingly, the Panel does not consider the Claimant's loss of use of its Embassy building and Ambassador's residence in Baghdad or its loss of use of its previously damaged Consulate building in Basra to constitute a direct loss within the meaning of paragraph 16 of resolution 687 (1991). For the same reasons, the Panel does not consider the rent that the Claimant prepaid on its Basra Consulate office to constitute a direct loss.

(b) Payment or relief to others

57. The Ministry claims it was required by the Government of Kuwait to pay the salaries of its employees for the period of the occupation and three months thereafter, "even though it did not receive the benefit of their services during the period". Although submitted as a claim for payment or relief to others, the payments made by the Ministry several months after 2 March 1991 did not cover the type of "temporary and extraordinary living expenses that result from individuals' departure from Kuwait or Iraq or their inability to return to those countries during the period 2 August 1990 to 2 March 1991," which the Panel has determined are compensable by the Commission under this loss type. 10/

58. The payment of salaries by the Ministry to its employees cannot as such be considered to result directly from Iraq's invasion and occupation of Kuwait within the meaning of paragraph 16 of resolution 687 (1991) because the Ministry would have incurred this salary expense in any event. 11/

59. The only conceivable loss to the claimant could be the loss of the value of the services for which the salaries were paid. However, the claimant did not seek compensation for such a loss, and such a loss would be very difficult to assess. Moreover, it is questionable whether there was any further need for such services at the time given the circumstances of the occupation.

(c) Public service expenditure

60. The Ministry requests compensation for the costs incurred "since liberation re-creating the record of Kuwait's treaties with Iraq, which were stolen or destroyed ..." Reference to the documents in support of this loss show, however, that the payments were made "for experts of demarcating borders between Kuwait and Iraq, for the previous phase of their work and the coming one that requires legal monitoring and the information campaigns". The documents also show that other payments under this loss type were made for "diplomatic activity in some of the sisterly and friendly countries, at Ambassadorial level to explain the details,

considerations, and effects of the decree of the Security Council No. 833 regarding demarcation of borders of Kuwait and Iraq".

61. In order to determine if any of the funds spent on the border demarcation project related to "re-creating the record of Kuwait's treaties with Iraq," by a procedural order the Panel requested that the Claimant "provide the name of the experts in Paris, France who were engaged for the ... project and to produce detailed billing statements from such experts relating to their work". The Claimant did not, however, provide any of this information to the Panel.

62. The Panel does not consider payments made with respect to expert and diplomatic activity involved in the demarcation of Kuwait's borders to constitute direct losses within the meaning of paragraph 16 of resolution 687 (1991). The demarcation of Kuwait's borders with Iraq is an issue that has been the subject of a long-running dispute between the two States that pre-dated the invasion and an operation which could have taken place at any time, irrespective of the invasion, 12/

3. Direct losses

(a) Real property

63. The Ministry seeks compensation for the costs it incurred in repairing and rebuilding its Kuwait City headquarters following the liberation of Kuwait. Given the fact that it is undisputed that Iraq took control of the Ministry's headquarters building during its occupation of Kuwait, the Panel considers the causal link between this loss and Iraq's invasion and occupation to have been established. Accordingly, the Panel decides that the repair costs incurred by the Claimant should be compensated to the extent they are adequately supported by documentary and other appropriate evidence.

(b) Tangible property

64. The Ministry also seeks compensation for tangible property losses arising out of the loss or damage to its library collection, transportation vehicles, computer and microfilm equipment, communications equipment, headquarters building furniture and fixtures, air conditioning units and other machinery, other office equipment and supplies, and special gifts to be given to visiting foreign dignitaries. For the same reasons that the Panel finds that the repair costs for the Ministry headquarters should be compensated, it decides that the Claimant's tangible property losses set out in this paragraph should be compensated to the extent that they are adequately supported by documentary and other appropriate evidence.

(c) Public service expenditure

65. The Ministry claims that immediately following the liberation of Kuwait, it was required to hire several additional clerical workers to perform archival work that had previously been done by a computer that was stolen during the occupation. The additional clerical workers were employed until a new computer could be purchased and installed by the Ministry. The Panel considers that a causal link between this additional expense and the loss of the Claimant's computer has been established by the Claimant. Accordingly, the Panel decides that the cost of performing manual archival work should be compensated to the extent that it is for a reasonable period and it is adequately supported by documentary and other appropriate evidence.

B. Kuwait University

1. Indirect losses

66. Several of the losses within the University's claim do not constitute direct losses within the meaning of Security Council resolution 687 (1991).

(a) Real property

67. The University seeks compensation for the costs the Claimant incurred in repairing its facilities that were damaged during Iraq's invasion and occupation of Kuwait. The amount claimed is based on the cost of 167 repair contracts entered into by the University following the liberation of Kuwait.

68. In its review of the contracts, the Panel identified two types of work that did not relate to the repair of the damage caused by Iraq's invasion and occupation of Kuwait. First, the Panel identified two contracts for new projects that the relevant University witness conceded did not relate to the repair of damage caused during the invasion and occupation. Second, the Panel learned that prior to the invasion of Kuwait, the University had maintained a large in-house maintenance staff. Following the liberation of Kuwait, the University substantially reduced its maintenance staff and contracted much of the work that had previously been handled in-house to private firms. The Panel's review of the repair contracts revealed that components of certain contracts included on-going and future maintenance work that was not part of the repair of occupation-related damage.

69. Neither new University building projects nor regular post-liberation maintenance work contracted to private firms can be considered to constitute direct losses within the meaning of paragraph 16 of resolution 687 (1991)

(b) Contract

70. The University also claims compensation for contract interruption losses. The Claimant alleges that two construction projects were in progress at the time of the invasion. On 27 January 1991, the Government of Kuwait, operating in exile, decreed that all public works contracts in Kuwait, including the two University contracts, were terminated due to an alleged force majeure, effective on 2 August 1990. Following the liberation of Kuwait, the University entered into new contracts with the construction firm that had been working on the projects at an increased price. It now seeks the difference in price between the terminated contract and the new contract.

71. The University does not address the legal implications arising out of the fact that the Government of Kuwait, not the contractor, terminated the contracts before they were completed. It seeks to demonstrate that the increased cost of its two construction projects results directly from Iraq's invasion and occupation by merely submitting the "before" and "after" contracts.

72. The Panel considers that such evidence alone is insufficient to establish the necessary causal link between the invasion and the increased price. The new contract price could have resulted from a number of intervening factors not necessarily linked to the invasion, such as a change in market conditions, the realization by the contractor that it had under-bid on the earlier contracts or the shortage of labour in Kuwait following liberation due to new immigration policies adopted by Kuwait. Whatever the actual reason for the increase in price, on the record before it, the Panel is unable to conclude that the contract interruption loss asserted by the University constitutes a direct loss within the meaning of Security Council resolution 687 (1991).

2. Direct losses

(a) Real property

73. As noted above, the University seeks compensation for the costs it incurred in repairing the damage to its facilities following the liberation of Kuwait. In its response to the claim, Iraq argues that real property damage to the University was caused by any of several groups of persons, including non-Kuwaiti employees of the University, Kuwaiti resistance or armed forces engaged in battle but not by Iraqi officials. Regardless of who caused the damage to the University's real property, it is clear from the extensive record before the Panel that the damage occurred during the period of the occupation of Kuwait. Accordingly, for the same reasons that the Panel finds that the repair costs for the Ministry headquarters should be compensated, it decides that the University's real property losses should be compensated to the extent that they are adequately supported by documentary and other appropriate evidence. 13/

V. OTHER ISSUES

A. Currency exchange rate

74. According to the Claimants, their losses were incurred in Kuwaiti dinars, but they converted them to dollar amounts for the purpose of presenting their Claims to the Commission. Therefore, the Panel is required to determine if the rate used by the Claimants is appropriate. In the First "F" Report the Panel decided that applying the currency exchange rate as of the date of loss is the best method under these circumstances for calculating the rate of exchange. In that report, the Panel used "16 November 1990, the midpoint of the occupation period, as the date of loss for the purposes of the application of currency exchange rates". 14/ Due to the significant disturbance of the exchange rate for the Kuwaiti dinar during the period of the occupation, for losses in that currency, the Panel used the exchange rate that prevailed immediately prior to the invasion. 15/

75. The patterns of losses in these Claims are similar to those covered in the First "F" Report. The Claimants here, however, measure their losses by the cost of repairing and restoring their facilities, which they incurred during the years following the liberation of Kuwait. And, they use the weighted-average exchange rate of the fiscal year in which they estimate that the payments were made. The expert consultants who assisted the Panel have reviewed the issue in relation to the Claims and have suggested that using this method, a weighted-average exchange rate of US$3.4255: KD 1.00 would be appropriate. This rate is less than the rate of US$3.46: KD 1.00 prevailing on 1 August 1990. Consequently, in order to avoid providing the Claimants with more compensation than requested, and in accordance with their own argument regarding the proper rate of exchange to apply, the Panel has adopted the rate of US$3.4255: KD 1:00. 16/

B. Interest

76. In decision 16, the Governing Council has decided that "[i]nterest will be awarded from the date the loss occurred until the date of payment at a rate sufficient to compensate successful Claimants for the loss of use of the principal amount of the award". 17/ The Governing Council reserved, however, the authority to decide the method of calculating interest on the Commission's awards. 18/ Thus, the Panel is only required to set the date from which interest will run. For the same reasons that the Panel used 16 November 1990 as the date of loss for the purpose of interest calculation in the First "F" Report, it determines that interest should be awarded on the Claims as of that date.

VI. QUANTIFICATION OF THE CLAIMS

77. As discussed above, the Panel decides that certain loss elements within the Claims should not be compensated because they failed to meet

either the Commission's pleading and evidentiary standard or the directness requirement formulated in resolution 687 (1991).

78. With respect to the loss elements that the Panel finds to be compensable, the Panel was required to verify that the losses had in fact occurred and then quantify such losses. The Panel was assisted in this effort by expert loss adjusting consultants and the secretariat. Initially, the Panel undertook a careful examination of the statements of claim and evidence filed by the Claimants. The Panel then required the Claimants to answer detailed questions and to produce additional documents that it deemed necessary to verify the circumstances and amount of the alleged losses.

79. Subsequently, the inspection team mentioned in paragraph 7 above held an on-site inspection at the headquarters of the Ministry and at the various campuses of the University. The team inspected the repairs that had been made to various buildings at the Ministry and University, interviewed witnesses who had personal knowledge regarding the damage underlying the Claims as well as witnesses who had knowledge regarding the building repair and maintenance projects that were undertaken by the Claimants following the liberation of Kuwait.

80. With respect to the University's real property damage claim, the inspection team reviewed every repair contract valued in excess of KD 100,000. For repair contracts under KD 100,000, the team reviewed a sample of 45. The sample contracts were selected on the basis of their size and repair category. Thus, the contracts for the largest amounts were included in the sample, as well as the contracts that were most likely to include indirect costs such as future maintenance work. In total, the team reviewed contracts worth approximately 92 per cent of the value of all of the contracts underlying the University's real property damage claim.

81. Upon completion of the inspection, the team reported to the Panel at a meeting in Geneva. Additionally, the Panel was presented with videotape evidence made by the team in Kuwait and reviewed other documentary evidence that was obtained during the inspection.

82. Finally, the arguments and evidence submitted by Iraq in its responses were considered by the Panel and, where applicable, were taken into account in the Panel's quantification of the Claims.

83. In quantifying the losses, the Panel weighed the amount and type of evidence submitted in support of the alleged losses and received advice from the loss adjusters regarding the amount and type of evidence that they would normally expect a Claimant to put forward in comparable catastrophic situations. The Panel also considered general loss adjustment principles such as the reasonableness of the cost of contracts, depreciation and betterment in deciding upon the amounts it should recommend in compensation. Again, the Panel was assisted by the expert consultants who,

having inspected the premises of the Claimants and the documents underlying the Claims, offered advice as to the proper amount of depreciation and betterment that should be factored into such items as air-conditioners and internal and external surface paint.

84. Based upon its review and evaluation of the Claims, the Panel makes the following determinations with regard to their quantification, which are summarized by loss classification in the tables below. The amounts have been rounded to the nearest United States dollar.

Ministry of Foreign Affairs			
Sub-claim	Loss elements	Amount claimed (US$)	Amount recommended (US$)
Real property	Repairs to headquarters building	2,480,744.00	1,252,066.00
	Real property in Iraq	8,229,730.00	0.00
Tangible property	Historical documents	33,122.00	0.00
	Library collection	1,921,749.00	1,032,140.00
	Transportation vehicles	743,858.00	405,733.00
	Computer and microfilm equipment	2,138,860.00	610,191.00
	Communications equipment	631,458.00	531,524.00
	Headquarters building furniture and fixtures	994,367.00	927,305.00
	Air conditioning units and other machinery	339,580.00	195,837.00
	Other office equipment and supplies	228,313.00	111,343.00
	Tangible property in Iraq	714,355.00	0.00
	Gifts and currency	3,865,191.00	455,337.00
Payment or relief to others	Retroactive payment of salaries to employees	8,882,582.00	0.00
Public service expenditure	Manual archiving of documents	244,202.00	123,318.00
	Border demarcation activities	1,500,000.00	0.00
	Post liberation diplomatic missions	2,000,000.00	0.00

Total			34,948,111.00	5,644,794.00
Kuwait University				
Sub-claim	Loss elements	Sub-loss elements	Amount claimed (US$)	Amount recommended (US$)
Real property	Contracts in excess of KD100,000		17,381,787.00	10,700,433.00
	Contracts below KD100,000	Air conditioning	2,304,927.00	953,499.00
		General repairs	2,759,021.00	2,154,611.00
		Landscaping	18,748.00	18,669.00
		Mechanical electrical repairs	1,497,432.00	924,725.00
		Painting work	232,551.00	115,786.00
		Replacement work	396,270.00	341,279.00
	Unrelated contracts		39,988.00	0.00
Contract	Interrupted contracts		632,462.00	0.00
Total			25,263,186.00	15,209,002.00

85. Based on the foregoing, the Panel recommends that the following amounts should be paid to the Government of Kuwait in compensation for losses incurred by the Claimants as a direct result of Iraq's invasion and occupation of Kuwait:

(a) Kuwait Ministry of Foreign Affairs: US$5,644,794.00;

(b) Kuwait University: US$15,209,002.00.

Geneva, 30 January 1998

(Signed) Bjørn Haug
Chairman

(Signed) Georges Abi-Saab
Commissioner

(Signed) Michael J. Bonell
Commissioner

Notes

1/ Governing Council decision 10, "Provisional Rules for Claims Procedure" (S/AC.26/1992/10).

2/ "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the First Instalment of Claims by Governments and International Organizations (Category 'F' Claims)" (S/AC.26/1997/6).

3/ Governing Council decision 45, "Decision Concerning Part One of the First Instalment of Claims by Governments (Category "F" Claims) taken by the Governing Council of the United Nations Compensation Commission" (S/AC.26/Dec.45 (1997)).

4/ Governing Council decision 7, "Criteria for Additional Categories of Claims" (S/AC.26/1991/7/Rev.1).

5/ See First "F" Report, paras. 47-64.

6/ Ibid., para. 81.

7/ See First "F" Report, para. 58.

8/ Ibid., para. 74.

9/ Vienna Convention on Diplomatic Relations of 1961 (United Nations, Treaty Series, vol. 500) p. 95.

10/ First "F" Report, para. 84. The Kuwait Ministry of Finance, on the other hand, has, in a separate claim, sought compensation for the money it expended to cover "living and housing expenses in the countries where Kuwaitis sought refuge, the extra medical expenses that had to be paid for Kuwaitis requiring treatment abroad during the occupation and extraordinary educational expenses for Kuwaiti students abroad during the occupation." The Ministry of Finance's claim will be considered by the Commission in due course.

11/ See also, for example, "Report and Recommendations Made by the Panel of Commissioners Appointed to Review the Well Blowout Control Claim" (S/AC.26/1996/5) (the "WBC Claim Report"), para. 162 ("Considering that the fire-fighting personnel in question appear to have been regular staff members of KOC, the Panel is of the opinion that the Claimant would have had to make such salary payments even if there had been no invasion.").

12/ Indeed, in the Ministry's statement of claim, it is acknowledged that in negotiations that were taking place between Kuwait and Iraq in the days prior to Iraq's invasion, Iraq had "renewed old territorial claims relating to oil reserves in Northern Kuwait which had been unsuccessfully asserted by Iraq in years past".

13/ See First "F" Report, paras. 71-73. See also, for example, WBC Claim Report, paras. 85-86.

14/ First "F" Report, para. 101.

15/ Ibid., para. 102.

16/ Ibid., para. 102 n. 46 (The Panel adopted a similar approach in the First "F" Report in order not to over compensate the Sri Lankan claimant.).

17/ Governing Council decision 16, "Awards of Interest" (S/AC.26/1992/16), para. 1.

18/ First "F" Report, para. 103.

Annex IV

Decision concerning part two of the first instalment of claims by Governments (category F claims) taken by the Governing Council of the United Nations Compensation Commission at its 77th meeting, held on 11 March 1998 at Geneva*

The Governing Council,

Having received, in accordance with article 38 of the Provisional Rules for Claims Procedure, the report of the Panel of Commissioners appointed to review claims by Governments and international organizations (category "F" claims), covering two claims, [1]/

1. Approves the recommendations made by the Panel of Commissioners, and, accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amount of the recommended award of US$20,853,796 concerning the claims of the Government of Kuwait covered in the report,

3. Reaffirms that when funds become available payments shall be made in accordance with Decision 17 [S/AC.26/Dec.17 (1994)],

4. Recalls that when payments are made in accordance with Decision 17 [S/AC.26/Dec.17 (1994)] and pursuant to the terms of Decision 18 [S/AC.26/Dec.18 (1994)], the claimant Government shall distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution,

5. Requests the Executive Secretary to provide a copy of the report to the Secretary-General, the Government of Kuwait and the Government of the Republic of Iraq.

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* Previously issued as document S/AC.26/Dec.50 (1998).

[1] The text of the report is attached hereto (document S/AC.26/1998/4) [see annex III].

Annex V

Third report of the Executive Secretary pursuant to article 41 of the Provisional Rules for Claims Procedure: Requested corrections to approved claim awards*

1. The present report identifies, pursuant to article 41 of the Provisional Rules For Claims Procedure (S/AC.26/1992/10) (the "Rules"), requested corrections to approved claim awards in claims category "A".

2. As noted in the last such report of the Executive Secretary (S/AC.26/1997/4), requested corrections typically have been reported by the Commissioner Panels in their reports and recommendations to the Governing Council. However, the category "A" Panel has concluded its work and no longer sits. Therefore, the requests for corrections to approved claim awards in category "A" will be reported by the Executive Secretary to the Governing Council.

3. Corrections have been requested to category "A" claim awards in the first, second, fourth and sixth instalments of category "A".

I. FIRST INSTALMENT CORRECTIONS

4. In the first instalment of category "A" claims, one claim submitted by the United States of America was found to be a duplicate of a claim awarded compensation in the same instalment. No compensation should be awarded for the duplicate claim. The total recommended award for the United States in the first instalment should be amended accordingly from US$889,500 to US$887,000.

* Previously issued as document S/AC.26/1998/5.

II. SECOND INSTALMENT CORRECTIONS

5. In the second instalment of category "A" claims, one claim from India was found to be a duplicte of a claim awarded compensation in the same instalment. No compensation should be awarded for the duplicate claim. The total recommended award for India in the second instalment should be amended accordingly from US$50,127,500 to US$50,123,500.

III. FOURTH INSTALMENT CORRECTIONS

6. The first article 41 report (S/AC.26/1997/2) identified one claim submitted by Sudan to be a duplicate of another claim, both originally reported in the fourth instalment but subsequently moved to the second instalment for the purpose of payment, pursuant to conclusions reached by the Governing Council on 21 January 1997. However, additional information submitted by the Government of Sudan has now shown that the two claims were actually submitted by two different individuals and that no duplication exists in this situation. The recommended revised award for the claim previously identified as a duplicate is US$4,000. The total recommended award for Sudan in the fourth instalment should be amended accordingly from US$10,218,000 to US$10,222,000.

IV. SIXTH INSTALMENT CORRECTIONS

7. In the sixth instalment of category "A" claims, one claim submitted by the Russian Federation was incorrectly identified as a duplicate of another claim in the same instalment. The recommended revised award for this claim is US$4,000. The total recommended award for the Russian Federation in the sixth instalment should be amended accordingly from US$3,380,000 to US$3,384,000.

Annex VI

Decision concerning the correction of awards for category A claims pursuant to article 41 of the Provisional Rules for Claims Procedure taken by the Governing Council of the United Nations Compensation Commission at its 77th meeting, held on 11 March 1998 at Geneva*

The Governing Council,

Having received, in accordance with article 41 of the Provisional Rules For Claims Procedure (S/AC.26/1992/10) (the "Rules"), a report by the Executive Secretary covering 4 claims in category "A", [1]

1. Decides, pursuant to article 41 of the Rules, to correct the amounts of the approved awards for one claim from the first instalment, one claim from the second instalment, one claim from the fourth instalment and one claim from the sixth instalment. [2] The aggregate corrected amounts per country, by claim instalment, are as follows:

Instalment	Country	Previous Total Recommended Award (US$)	Corrected Total Recommended Award (US$)
First	United States of America	889,500.00	887,000.00
Second	India	50,127,500.00	50,123,500.00
Fourth	Sudan	10,218,000.00	10,222,000.00
Sixth	Russian Federation	3,380,000.00	3,384,000.00

2. Directs the Executive Secretary to effect the above corrections and to provide copies of the tables containing the breakdown of the amounts to be paid to the affected individual claimants to each respective Government.

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* Previously issued as document S/AC.26/Dec.51 (1998).

[1] The text of the report is attached (document S/AC.26/1998/5) [see annex V].

[2] In conformity with the provisions on confidentiality in the Provisional Rules for Claims Procedure (articles 30, para. 1, and 40, para. 5), a table containing the breakdown of the corrected amounts to be paid to each individual claimant will not be made public, but will be provided to each respective Government separately.